

***United States Court of Appeals
for the Second Circuit***



**RESPONDENT'S
BRIEF**

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w/affidavit of mailing

77-4030

To be argued by
RICHARD J. LEON

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-4030

PETER NOLASCO CEIGO,

Petitioner,

—v.—

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

ON PETITION FOR REVIEW FROM THE BOARD OF
IMMIGRATION APPEALS

BRIEF FOR RESPONDENT

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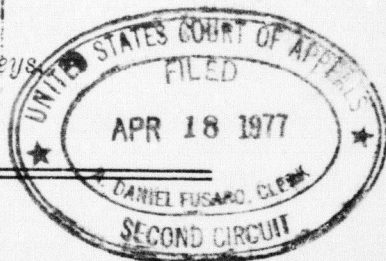


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PETER NOLASCO CEIGO,

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IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

BRIEF FOR RESPONDENT

Issue Presented

Whether the Board of Immigration Appeals Abused Its Discretion By Denying Petitioners Application For Suspension Of Deportation, Or In The Alternative, Voluntary Departure.

Statement of the Case

Pursuant to Section 106(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1105a(a), Peter Nolasco Ceigo ("Ceigo") petitions this Court to review a final order entered by the Board of Immigration Appeals ("Board") on December 20, 1976. The Board's order dismissed Ceigo's appeal from the May 28, 1976 decision of Immigration Judge Anthony De Gaeto deny-

ing his applications for the discretionary privileges of suspension of deportation and voluntary departure (AR 5).¹ It is the Immigration and Naturalization Service's ("Service") position that the Board properly concluded that Ceigo failed to demonstrate that he merited the grant of either of these forms of discretionary relief and that this petition for review should be dismissed.

Statement of the Facts

The petitioner, Peter Nolasco Ceigo, is a 43 year old native and citizen of Belize (AR 59). In March, 1963, Ceigo boarded the S.S. Jenney One in Belize. When the ship docked in Tampa, Florida he disembarked,² but remained in the country a short period of time before returning to his native land. In March, 1964, Ceigo again surreptitiously entered the United States by swimming across the Rio Grande River from Mexico and walking across the border into Texas without submitting

¹ References preceded by the letters "AR" refer to the certified administrative record previously filed with this Court.

² The record does not indicate what Ceigo's legal status was when he entered this country at Tampa, Florida in 1963. The warrant of deportation (AR 51), relating to that incident in the record, states that his entry was a violation of Section 241(a)(1) of the Act, 8 U.S.C. § 1251(a)(1). That specific section of the Act provides that any alien who is excludable under Section 212(a) of the Act, 8 U.S.C. § 1182(a), at the time of his entry, may be deported (e.g. Aliens who are stowaways are excludable under Section 212(a)(18) and are therefore deportable under Section 241(a)(1)). Since Ceigo has conceded his deportability with respect to each of his illegal entrances his particular status at that time is not of consequence in this petition.

to an inspection (AR 59).³ From Texas he proceeded to California where he lived for eight months.

In October, 1964 Ceigo left the country for a second time and returned to Belize (AR 59). In July, 1965, after another eight month period, he returned to the United States, again crossing the Mexican border into Texas without inspection (AR 59).⁴ Instead of returning to California he proceeded to New York City and settled in Brooklyn (AR 59). Within a year's time he was located, taken into custody by Service investigators, and deportation proceedings were instituted against him for his illegal entrance in Florida in 1963. After being found deportable, a warrant of deportation was issued on June 22, 1966 (AR 51) and Ceigo was deported to Belize at the United States Government's expense on July 18, 1966 (AR 51).

In September, 1966, less than three months later and apparently confident in his ability to surreptitiously enter this country, Ceigo unlawfully crossed the Mexican border into San Ysidro, California (AR 59). Thereafter, he returned to Brooklyn and began working again. Except for a period of hospitalization from June, 1968 to November, 1969,⁵ Ceigo was continuously employed as a

³ Pursuant to Section 235(a) of the Act, 8 U.S.C. § 1225(a), all aliens seeking to enter the United States must submit to an inspection by one or more Service officers during which the Service officer must determine if the alien is eligible for admission into the United States. Section 241(a)(2) of the Act, 8 U.S.C. § 1251(a)(2), provides that any alien who entered the United States without inspection shall be deported upon the order of the Attorney General.

⁴ See note 3 *supra*.

⁵ According to his testimony before Judge DeGaeto at his subsequent deportation proceeding, Ceigo was mugged in New York City in 1968 (AR 44). He testified that he sustained arm

[Footnote continued on following page]

factory worker until December 1974 when he left the country to stay with his parents in Belize.⁶ After remaining with them for five weeks, Ceigo decided to return to New York City. Buoyed by his experience-tested ability to enter this country without detection,⁷ Ceigo once again entered in a stealthy manner by crossing from Mexico into MacAllen, Texas on January 26, 1975 without being inspected (AR 40).

On March 5, 1976, Ceigo was located and taken into custody by agents of the Service. Thereupon, the Service instituted deportations proceedings against him by issuing an Order to Show Cause and Notice of Hearing (AR

and leg bruises and injuries to his renal system which required an operation (AR 36). Petitioner has included, at page four in the appendix of his brief, a letter from the Bird S. Coler Hospital stating that he was hospitalized there from June of 1968 to November of 1969. It should be noted that this notice is not part of the certified administrative record upon which this appeal must be decided, Section 106(a)(4) of the Act, 8 U.S.C. § 1105 (a)(4), and that it was inserted into the appendix without consultation with, or the consent of, the respondent despite the requirements of Rule 30 of the Rules of Appellate Procedure.

⁶ In his testimony before Judge De Gaeto, Ceigo stated that he went to Belize in December, 1974 to make his parents "feel better" by showing them, in person, that their fears that he might still be suffering from the injuries he sustained in 1968 were unfounded (AR 39-40). This testimony is, of course, supported by and consistent with his acknowledgment that he has been working continuously since shortly after his hospital release in December, 1969 (AR 33-34, and 59). However, it is inconsistent with his assertion to Judge De Gaeto that he should be allowed to remain in this country because of his medical problems (AR 46).

⁷ Ceigo's confidence in entering this country undetected was best exemplified in his testimony before Judge De Gaeto when he matter of factly stated that he was sure he could return to this country because he knows "the way to come . . . here" (AR 47).

63). In this order the Service charged Ceigo with entering this country without inspection at San Ysidro, California in September, 1966.⁸

On March 28, 1976 Ceigo's deportation hearing was conducted by Immigration Judge Anthony De Gaeto at the Service's New York City office. During the hearing Ceigo conceded his deportability and asked the Judge to grant him the discretionary privilege of suspension of deportation, or, in the alternative, voluntary departure (AR 22). After Ceigo's counsel submitted the application for suspension of deportation to the Judge for admission into evidence, the Service's trial attorney informed Judge De Gaeto that there appeared to be an inconsistency in the application (AR 23). Since the Service had no objection to its admission into evidence, the Judge admitted the application and thereafter requested Ceigo's counsel to review it with his client to make sure that all the statements he made were correct (AR 23). In response, Ceigo's counsel refused to go over the application and directed his client to review it for its accuracy (AR 23).⁹ After doing so, Ceigo admitted to the Judge that all the information was correct and signed his name on the application in testament thereto (AR 24).

In his application for suspension of deportation, Ceigo admitted entering the country without inspection

⁸ See note 3 *supra*.

⁹ This action by Ceigo's counsel is curious in light of the position he asserted in his client's later deportation proceeding; that Ceigo is incapable of understanding the nature of his deportation proceeding because of mental injuries sustained from a mugging incident in 1968 (see note 12 *infra*).

To allow an allegedly mentally impaired client to review *alone* a detailed legal statement and assert under oath the accuracy thereof to an Immigration Judge, while knowing that the document is critical to the acquisition of this available remedy to deportation, is to cast doubt on either the propriety of his judgment or the veracity of his contention (see note 16 *infra*).

on January 26, 1975 (AR 59). The Service, not previously aware of this subsequent illegal entry, submitted to the petitioner and the Immigration Judge, pursuant to 8 C.F.R. § 242.17(d),¹⁰ an additional charge of deportation relating to this entry (AR 25). After reading this charge to Ceigo, and determining that his counsel wanted additional time to respond thereto, Judge De Gaeto postponed the proceedings (AR 25).

On June 11, 1976 Ceigo's deportation proceeding was reconvened (AR 26). At that time Ceigo conceded his deportability under the new charge (AR 31). As a result, the only issue that remained for the Immigration Judge to adjudicate was whether Ceigo should be granted the discretionary relief he requested. However, notwithstanding his failure to make any request at the May 28, 1976 proceeding, Ceigo's counsel now sought to delay his client's deportation proceedings by requesting the Court to

¹⁰ Title 8, Code of Federal Regulations, Section 242.17:

(d) *Additional charges.* A trial attorney who has been assigned to a case may at any time during a hearing lodge additional charges of deportability, including factual allegations against the respondent. The additional factual allegations and charges shall be submitted in writing and entered as an exhibit in the record. The special inquiry officer shall read the additional factual allegations and charges to the respondent and explain them to him in non-technical language. The special inquiry officer shall advise the respondent if he is not represented by counsel that he may be so represented and also that he may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he desires a continuance for either of these reasons. Thereafter, the provisions of paragraph (b) of this section shall apply to the additional factual allegations and lodged charges.

issue a subpoena ¹¹ for certain hospital records which would allegedly demonstrate that his client was mentally incompetent to testify. Judge De Gaeto, reserving his decision on this request, asked Ceigo's counsel to proceed with his questioning to determine whether his client merited the extraordinary relief of suspension of deportation (AR 28-29). Ceigo's counsel however, refused to proceed,¹² or

¹¹ Under 8 C.F.R. § 287.4, an Immigration Judge is empowered, once a deportation proceeding has commenced, to issue a subpoena "requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both." However this regulation states explicitly that,

"A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding what he expects to prove by such witnesses or documentary evidence, and to show affirmatively that he has made diligent effort without success to produce the same."

Moreover, this section provides that the subpoena shall be issued only if the Immigration Judge is "satisfied that a witness will not appear and testify or produce documentary evidence and that his evidence is *essential*." 8 C.F.R. § 287.4 (emphasis added).

¹² Ceigo's counsel's refusal to proceed was apparently based on his *unsupported contentions* that his client was suffering from some type of mental impairment which thereby rendered him incapable of testifying (AR 29). Despite these repeated allusions to mental impairment and hospitalization Ceigo neither by testimony nor documents ever demonstrated any history of such medical difficulties. In fact, his own description of the injuries he suffered as a result of the mugging incident did not include any reference to head or brain injuries (AR 36). Additionally, the letter, improperly inserted in petitioner's appendix on appeal (*see* note 5, *supra*), from the hospital where Ceigo was admitted does not indicate that this hospital specializes in mental illness or that his injuries were related to any mental impairment (Petitioner's Appendix, page 4).

Finally it should be noted that when Judge De Gaeto instructed Ceigo to answer all questions posed unless he wished to assert his constitutional right against self-incrimination, both Ceigo and his counsel conceded that he did not wish to claim any constitutional privilege. Thereafter, Ceigo answered all questions posed (AR 31).

introduce testimonial evidence supporting his contention. Accordingly, the Service's trial attorney questioned Ceigo at length about the factual context of his application for suspension of deportation, as well as the circumstances and details surrounding his numerous illegal entries.

During the course of his testimony Ceigo admitted that he was married in 1959, but asserted that he had been separated since 1961 (AR 4-5). He further admitted that although neither divorced nor legally separated from his wife, he had fathered an illegitimate child while in this country (AR 32).¹³ He also testified that he had no immediate family or financial interests in the United States (AR 38).

After the Service's trial attorney finished, the Judge again presented Ceigo's counsel with the opportunity to ask any questions to help establish why either the relief being sought or the requested subpoena should be granted (AR 49). In response, Ceigo's counsel stated that he saw no need at that time for his client to be questioned further, because he felt that his answers indicated the hardship involved and that there were "no other factors in [the] case that [hadn't] been brought out." (AR 49). There-

¹³ The record neither indicates exactly when or where Ceigo's illegitimate child was born. Although petitioner's counsel, in his brief, asserts that the child was born in May 1966, nothing in the certified administrative record supports this contention. In this respect, it is noteworthy that Ceigo's counsel did not question him about this at the deportation hearing. Furthermore, in view of the Board's finding that Ceigo did not warrant the requested relief as a matter of discretion, the issue of whether this act is adultery, thereby precluding a finding of statutory eligibility, need not be decided. See *Immigration and Naturalization Service v. Bagamasbad*, 45 U.S.L.W. 3326 (U.S. Nov. 1, 1976).

fore, based on the testimony presented and the application submitted, Judge DeGaeto found Ceigo statutorily ineligible for the discretionary relief of suspension of deportation because he interrupted the required seven years of continuous physical presence¹⁴ by leaving the country for five weeks between December, 1974 and January, 1975 (AR 19).¹⁵ Furthermore, he found as a matter of discretion that Ceigo was not deserving of voluntary departure because of his previous deportation (AR 20). Finally the Judge denied the alien's request for a subpoena because he failed to demonstrate the "essential nature" of the information he was seeking.¹⁶

¹⁴ Section 244(a)(1) of the Act, 8 U.S.C. § 1254(a)(1), requires that an alien establish that he has been present in the United States *at least* seven consecutive years immediately preceding his application for suspension of deportation.

¹⁵ A discussion analysing the propriety of this particular decision is unnecessary by this Court, due to the Board's pretermittting of this issue. See text accompanying note 17, *infra*. However it is noteworthy that the Second Circuit in a very recent decision, *Heitland v. Immigration and Naturalization Service*, Docket No. 76-4141 (2d Cir., decided January 27, 1977), held that two aliens illegally in this country violated the continuous presence requirement for suspension of deportation by taking a six week trip to Europe to visit their family and securing their reentry into the United States by using "implicitly deceptive methods." Unlike the "sudden spur-of-the moment holiday or trip across the border to Mexico and Canada" which was presented in the cases relied upon by the aliens, the Court characterized the aliens carefully calculated reentry plan as being so directly contrary to the policies underlying our immigration laws that it should not be *rewarded* by the granting of this extraordinary remedy.

Considering Ceigo's sojourn to Belize in light of this decision, it is highly unlikely that he would be successful, if the issue were on appeal, in arguing that he had not similarly violated the seven year continuous presence requirement.

¹⁶ As stated in note 11 *supra*, it is required that the party seeking the issuance of a subpoena under 8 C.F.R. § 287.4 demonstrate that these records are essential. Ceigo's "Application for

[Footnote continued on following page]

On June 18, 1976, Ceigo appealed the Judge's decision to the Board, contending that Judge DeGaeto had (1) erroneously concluded that he was ineligible for suspension of deportation; (2) failed to determine his eligibility for voluntary departure; and (3) erroneously denied his subpoena application. On December 20, 1976 the Board issued its decision dismissing Ceigo's appeal. The Board did not make a complete finding on Ceigo's eligibility for suspension of deportation or voluntary departure, but instead found that he had not sufficiently demonstrated that he merited the favorable granting of the discretionary relief sought (AR 3).¹⁷ In addition the Board found that

Issuance of a Subpoena" merely states that he expects to be able to show from these medical records that "as a result of physical and mental injuries [Ceigo] frequently fails to understand the nature and quality of his acts" (AR 8). Ceigo's counsel had the opportunity and was urged by the Judge (*see* text accompanying note 12 *supra*) to question his client. Nothing in the record indicates that Ceigo suffered any head injuries from this mugging incident (*see* note 12 *supra*). In fact, the frivolity and questionable good faith of this contention is highlighted by the fact that Ceigo's counsel, during the deportation proceeding, directed his allegedly mentally impaired client to review *alone* the statements he had made in his application for suspension of deportation and thereafter permitted him to represent to the Judge that they were complete and accurate (*see* note 9 *supra*). *See Acevedo v. Immigration and Naturalization Service*, 538 F.2d 918 (2d Cir. 1976).

Finally, the Immigration Judge obviously concluded from observing and listening to Ceigo during his questioning by the Service's trial attorney, that he did not demonstrate any obvious mental impairments or comprehension problems (e.g. Ceigo's mental acuity was such that during questioning by the Service's trial attorney he was able to point out an error in his application for suspension of deportation (AR 43)). Accordingly the Judge properly denied the requested subpoena.

¹⁷ An applicant for the discretionary relief of suspension of deportation (Section 244(a) of the Act, 8 U.S.C. § 1254(a) and or voluntary departure (Section 244(e) of the Act 8 U.S.C. § 1254(e) has the burden of demonstrating that he merits a

[Footnote continued on following page]

the Judge's denial of Ceigo's requested subpoena was proper (AR 3).¹⁸ Accordingly, a warrant of deportation against the petitioner was issued on December 27, 1976 (AR 1). On January 28, 1977, Ceigo filed his petition for review in this Court and since then he has been able to remain in the United States pursuant to the automatic statutory stay of deportation which accompanies a petition for review filed pursuant to Section 106(a) of the Act, 8 U.S.C. § 1105a(a).

Relevant Statute

Immigration and Nationality Act, 63 Stat. 163 (1952) as amended:

Section 244, 8 U.S.C. § 1254—

(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and—

(1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continu-

favorable exercise of discretion. *Rassano v. Immigration and Naturalization Service*, 492 F.2d 220, 227 (7th Cir. 1974) (suspension of deportation); *Hibbert v. Immigration and Naturalization Service*, Docket No. 76-4172 (2d Cir., decided April 4, 1977) (voluntary departure).

¹⁸ The Board upheld Judge DeGaetano's conclusion that the subpoena should not be granted because the petitioner had failed to demonstrate that the evidence requested was "essential" (AR 5). See note 16 *supra*.

ous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence;

* * * * *

(e) The Attorney General may, in his discretion, permit any alien under deportation proceedings, other an alien within the provisions of paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of Section 1251(a) of this title . . . to depart voluntarily from the United States at his own expense in lieu of deportation as such alien shall establish to the satisfaction of the Attorney General that he is, or has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

* * * * *

ARGUMENT

The Board of Immigration Appeals Did Not Abuse Its Discretionary Authority By Declining To Grant Petitioner's Request For Suspension Of Deportation Or, In The Alternative, Voluntary Departure.

A. Introduction

Ceigo asked both Judge DeGaeto during his deportation proceedings and the Board, on appeal thereafter, for the privilege of either suspension of deportation or, in the alternative, voluntary departure. Both of these

forms of relief are extraordinary in nature and are granted as a matter of discretion.

1. Suspension of Deportation

Suspension of deportation pursuant to Section 244(a) of the Act, 8 U.S.C. § 1254(a), is the ultimate form of relief available to a deportable alien. An alien whose application is approved has his deportability cancelled and obtains status adjustment to that of a permanent resident without having to leave the United States. Authority to grant or deny this relief is vested within the sound discretion of the Attorney General. *Hintopoulos v. Shaughnessy*, 353 U.S. 72 (1957). Those applications which are approved by the Attorney General must be referred to the Congress for final legislative approval. Section 244(c) of the Act, 8 U.S.C. § 1254(c); *McGrath v. Kristensen*, 340 U.S. 162 (1950).

In order to qualify for suspension of deportation, an alien must first satisfy certain objective requirements contained in the statute. He must establish that he has been physically present in the United States for at least seven consecutive years immediately preceding his application, and that he had been a person of good moral character during that period. He must also convince the Attorney General that his deportation would result in extreme hardship to himself or to a close relative who is a citizen or resident alien of this country.

The applicant for suspension of deportation has the burden of showing that he meets these prescribed conditions. 8 C.F.R. 242.17(d); *Kimm v. Rosenberg*, 363 U.S. 405 (1960), *rehearing denied*, 364 U.S. 854; *Brownell v. Cohen*, 250 F.2d 770 (D.C. Cir. 1957). If he fails to establish statutory eligibility, the application must be denied as a matter of law. Attainment of the statutory

minimum, however, does not mean that relief will be automatically granted. The alien who satisfies the statutory requirements still has the burden of convincing the Attorney General that he merits the favorable exercise of discretion. *Hintopoulos v. Shaughnessy*, *supra*; *Wong Wing Hang v. Immigration and Naturalization Service*, 360 F.2d 715 (2d Cir. 1966); *Ng v. Pilliod*, 279 F.2d 207 (7th Cir. 1960), *cert. denied*, 365 U.S. 860 (1961).

2. Voluntary Departure

The granting or denial of the privilege of voluntary departure is also within the broad discretion of the Attorney General or his delegates. *Strantzalis v. Immigration and Naturalization Service*, 465 F.2d 1016 (3d Cir. 1972); *United States ex rel. Bartsch v. Watkins*, 175 F.2d 245 (2d Cir. 1949). Furthermore, even if the alien carries his burden by meeting the statutory and regulatory departure, see 8 U.S.C. § 1254(e); 8 C.F.R. § 244.1, this merely establishes his eligibility for relief. Discretion must still be exercised and may properly result in a denial of the privilege. *Hibbert v. Immigration and Naturalization Service*, Docket No. 76-4172 (2d Cir., decided April 4, 1977). *Strantzalis v. Immigration and Naturalization Service*, *supra*; *Khalai v. Immigration and Naturalization Service*, 361 F.2d 208 (7th Cir. 1966); *Fernandez-Gonzalez v. Immigration and Naturalization Service*, 347 F.2d 737 (7th Cir. 1965). See also *Hintopoulos v. Shaughnessy*, *supra* at 77 (1957). The privilege of voluntary departure is considered extraordinary discretionary relief, and will only be granted in meritorious cases. *Diric v. Immigration and Naturalization Service*, 400 F.2d 658 (9th Cir. 1968), *cert. denied*, 394 U.S. 1015 (1969). The absence of good faith, the use of dilatory tactics and the failure to depart within the initial period set by the Immigration Judge may in and of themselves be a sufficient ground for the denial of additional discre-

tionary relief. *Fan Wan Keung v. Immigration and Naturalization Service*, 434 F.2d 301 (2d Cir. 1970); *United States ex rel. Lee Pao Fen v. Esperdy*, 423 F.2d 6 (2d Cir. 1970); *Lam Tat Sin v. Esperdy*, 227 F. Supp. 482 (S.D.N.Y. 1964), *aff'd*, 334 F.2d 999 (2d Cir.), *cert. denied*, 379 U.S. 901 (1964).

B. The Scope of Review

In its decision not to grant discretionary relief to Ceigo, the Board did not make a complete finding whether he had complied with the statutory prerequisites to be eligible for consideration of this relief.¹⁹ Instead, the Board based its denial on an exercise of discretion, finding that under the circumstances Ceigo had failed to demonstrate that he merited the extraordinary relief he sought. Since the Board may pretermitt the question of statutory eligibility and deny both forms of relief as an exercise of discretion, *Immigration and Naturalization Service v. Bagamasbad*, 45 U.S.L.W. 3326 (U.S. Nov. 1, 1976) *Hibbert v. Immigration and Naturalization Service*,

¹⁹ The Board's opinion acknowledged that the Immigration Judge had found Ceigo ineligible for suspension of deportation for failing to establish the statutory requirement of seven years of continuous physical presence, but decided not to reach a determination of that issue, resolving the appeal solely on the basis of discretion (AR 4). The Board did comment that Ceigo's admission to having fathered an illegitimate child in this country while still married, constituted and admission of adultery which would preclude him from establishing good moral character under Section 101(f)(2) of the Act, 8 U.S.C. § 1101(f)(2) (AR 4). However, it did not state specifically that Ceigo was therefore ineligible for suspension of deportation and voluntary departure because these privileges require a showing of good moral character throughout the statutory period of eligibility. In fact, since the record did not indicate exactly when the illegitimate child was born (*see* note 13 *supra*), it is most likely that the Board intended to limit this observation to a comment relating to its discretionary decision, not a finding on statutory eligibility.

supra, the scope of this Court's review is limited to whether the Board's decision not granting this relief constituted an abuse of discretion.

In reviewing an exercise of discretionary authority the scope of judicial review is extremely narrow. This Court is precluded from substituting its judgment for that of the Board unless the determination is found to be without any rational explanation, to depart inexplicably from established practices, or rest on an impermissible basis. *Wong Wing Hang v. Immigration and Naturalization Service*, 360 F.2d 715 (2d Cir. 1966). It is against this narrow standard that Ceigo's claims must be examined. *Rassano v. Immigration and Naturalization Service*, 492 F.2d 220 (7th Cir. 1974); *Ex Parte Orlando*, 131 F. Supp. 485 (S.D.N.Y.), *aff'd*, 222 F.2d 537 (2d Cir.), *cert. denied*, 350 U.S. 862 (1954).

C. The Record In This Case Demonstrates That The Board Did Not Abuse Its Discretion

The Board's conclusion, that Ceigo did not merit "the favorable exercise of discretion", was based on the fact that he had been previously deported and that he had failed to demonstrate any equities in his own behalf (AR 3). A brief review of the salient facts in the record highlights the propriety of that conclusion.

Ceigo's immigration record and conduct is the antithesis of the type of alien that the desired discretionary relief was intended.²⁰ During the past four-

²⁰ Besides admitting to entering this country without inspection both prior and subsequent to his deportation in 1960, Ceigo testified that he never complied with the alien reporting require-

[Footnote continued on following page]

teen years Ceigo has managed, through his illegal actions, to circumvent the immigration laws designed to monitor the vast influx of aliens each year.²¹ Without authorization from the Service, he has steadily worked in this country in violation of the policies established in Section 212(a) 44, of the Act, 8 U.S.C. § 1182(a) (14). See *Noel v. Chapman*, 568 F.2d 1023 (2d Cir.), *cert. denied*, 923 U.S. 824 (1975). Although still married to another woman, he has fathered an illegitimate child in this country, who the record seems to indicate he does not support financially (AR 34). He has no immediate relatives or fam-

ments in Section 265 of the Act, 8 U.S.C. 1305 (AR 38-39); his testimony at the hearing indicating that his purpose in this respect was to avoid apprehension and evade the immigration laws. Under this section all aliens are required in January of each year to inform the Attorney General of their current addresses and furnish "such additional information as may by regulations be required".

It appears that Ceigo may be criminally liable under Title 8 U.S.C. for each of these admitted acts. Section 266(b), 8 U.S.C. 1306(b), provides that an alien's failure to comply with the notice provisions in Section 265 is a misdemeanor punishable by a fine, imprisonment or both. Section 275 of the Act, 8 U.S.C. 1325, provides that any alien who enters the country on two or more occasions without the permission of the Service, or an inspection by the Service, is guilty of felony, punishable by a fine, imprisonment or both. Finally, Section 276 of the Act, 8 U.S.C. 1326, provides that any alien who reenters the country without the Service's consent, after having been previously deported, shall be guilty of a felony, punishable by a fine, imprisonment or both.

Accordingly, Ceigo, by virtue of his illegal activities may be liable to a criminal prosecution as well.

²¹ Ceigo's evasive tactics have not been limited to the borders and immigration laws of the United States. In his testimony before Judge De Gaeto, the petitioner admitted to having been arrested in and deported from Guatemala in 1950 (AR 35). Hopefully in the petitioner's case, the United States, like Guatemala, will shortly know the truth of Shakespeare's oft quoted line: "unbidden guests are often welcomest when they are gone". W. Shakespeare, *King Henry VI* [1591], Part I, Act I, sc ii, l. 55.

ily in this country who would suffer any hardship by his deportation. Moreover, he has no assets or financial enterprises which he would be forced to liquidate or forfeit upon his departure. In fact, the two possible hardships relied upon by Ceigo to justify the exercise of discretion (medical needs and employment opportunities) are neither supportable by law nor the record.

Ceigo claimed in his testimony before Judge De Gaeto that he was concerned that by returning to Belize he would not have available to him the type of doctors (urologists) necessary to treat him (AR 46). This barren contention was not, however, supported by any factual evidence or supporting testimony which might have been elicited by questions posed to him by his attorney. Moreover, the record indicates that since his release from the hospital Ceigo has worked steadily as a general laborer in several factories without the need or assistance of any specialized medical treatment (AR 60). Therefore besides not presenting any evidence of the exact nature of his physical problem and the unavailability of suitable medical care in Belize, Ceigo has demonstrated by his own testimony that despite any medical problem he has been able to function normally since his hospitalization and in addition was able to go to Belize for five weeks and return without any complications. Surely this is not a "medical hardship" which would have justified, despite his record, the exercise of discretion.

Finally, Ceigo's claim that his deportation would result in an economic hardship because he would not be able to get a job, "in his condition," in Belize (AR 36) is meritless for two reasons. First, even assuming that Ceigo's contention was true and actually constituted an "economic hardship", it is clear that a mere showing of economic hardship is insufficient to warrant the discretionary relief of suspension of deportation. *See Pelaez*

v. Immigration and Naturalization Service, 513 F.2d 303 (5th Cir. 1975); *Yong v. Immigration and Naturalization Service*, 459 F.2d 1004 (9th Cir. 1972). Second, Ceigo's post-hospitalization work record clearly demonstrates that he is quite capable of working in his present medical condition.

Considering the petitioner's consistent disregard of the immigration laws, total lack of equities and questionable moral character, the Board properly exercised its discretion by not rewarding him with either the privilege of suspending his deportation or, in the alternative, voluntary departure.

CONCLUSION

This petition for review should be dismissed.

Dated: New York, New York
April 18, 1977

Respectfully submitted,

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AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

Robert S. Groban, Jr. being duly sworn,
deposes and says that he is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the
two copies
he served ~~the~~ ^{two} copies of the

18th day of April 1977

within Appellee's Brief

by placing the same in a properly postpaid franked envelope addressed:

Edelman and Aronowitz
225 Broadway
New York, New York 10007

And deponent further says he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

18th day of April, 19 77

PAULINE P. TROIA
Notary Public, State of New York
No. 31-4632381
Qualified in New York County
Commission Expires March 30, 1978